Supreme Court, U.S.
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No.

In the
SUPREME COURT of the UNITED STATES

October Term, 1999

ROBIN and KAREN ZAHRAN

Petitioner,

v.

FRANKENMUTH MUTUAL INSURANCE COMPANY

Respondents,

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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73??

QUESTIONS PRESENTED FOR REVIEW

1. Whether the appeal court defected from the normal course of judicial proceedings resulting in the deprivation of Zahrans' rights to due process and to a fair opportunity to present their appeal upon discovery of fraud by their attorney which calls for this Honorable Court to exercise its supervisory power over the courts below.

2. Whether the appeal court erred in affirming the district court's reassertion of jurisdiction over the case after dismissal with prejudice.

3. Whether the district court and the appeal court deprived Zahrans of their constitutional right to counsel of their own choosing.

4. Whether the lower courts erred in refusing to dismiss and action against Zahrans at the time there was another pending action for the same cause in another United States.

5. Whether the appeal court panel members were constituted in violation of the Seventh Circuit own rules prohibiting disclosure of panel member judges before arguments and whether the panel demonstrated bias and prejudice against Zahrans, deprived Zahrans of their rights to due process and constitutional rights to have an impartial panel determine their appeal.

6. Whether the district court erred in accepting pleadings and filings by a non-admitted attorney to practice law in the United States District Court for the Eastern District of

Wisconsin nor was he licensed to practice law in the State of Wisconsin.

7. Whether the district court erred in denying Zahrans' motion to dismiss the action and the motion for the writ of execution when their was a previous court order of dismissal which served as an adjucation upon the merits and with prejudice.

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OPINIONS BELOW

The decision of the United States Court of Appeals for the Seventh Circuit is set forth in the appendix, p. 1-a. The opinion of the United States District Court for the Eastern District of Wisconsin dated 2/16/97 is set forth in the appendix, p. - Both decisions are unpublished and unreported.

STATEMENT OF THE BASIS OF JURISDICTION OF THE SUPREME COURT

The statuary provision for this court's jurisdiction is 28 USC 1254. The United States Court of Appeals for the Seventh Circuit issued its decision on 3/25/99. Panel rehearing and rehearing in banc were timely requested. Rehearing was denied on 5/15/99. Honorable Judge Stevens granted 60 days extension. This petition is therefore being timely filed within the 90 days of the panel rehearing denial and the extension of time granted.

The original jurisdiction was vested in the United States District Court pursuant to 28 U.S.C. }1332 based on diversity of citizenship. The court of appeals for the United States Seventh Circuit had jurisdiction pursuant to 28 U.S.C. }1291.

CONSTITUTIONAL, STATUTORY AND ORDINANCE PROVISIONS INVOLVED IN THIS CASE

The First, the Sixth, and the Fourteenth Amendment of the United States Constitution, the Bill of Rights, Rule One, Rule Twelve and Rule forty-one, Rule Sixty and of the United States Civil Procedures and Fed. R. App. P. 12(b) and 26.1 and the Local Rules of the United States Seventh Circuit Court of Appeals and the Constitutional Article governing the right for a judicial review by impartial panel on appeal and jurisdiction

STATEMENT OF THE CASE AND BACKGROUND

Robin and Karen Zahran, herein and after refer to as the petitioners originally filed an action for breach of contract, bad faith, and violation of statue against Frankenmuth Insurance Co. of Michigan in the U.S. District Court in Illinois for failure to pay the insurance proceeds timely. Frankenmuth although maintained throughout the loss adjustment that they paid the entire claim in full replied after the complaint was filed, alleging that they paid the contract obligations in full and for the first time alleged in its affirmative defenses that they relied on Zahrans' representations when they paid $181,975 in damages sustained by Zahrans and further requesting in a counterclaim that the court void the policy and to order the refund of the amounts of paid losses already paid plus interest.

Zahrans' attorneys did not file proper responsive pleadings to Frankenmuth's allegations and at the trial which took place on December 16, 1991, Zahrans' attorneys did not object to Frankenmuth's allegations nor moved to dismiss its affirmative defenses and counterclaim for failure to prove the elements of reliance alleged in Frankenmuth's affirmative defenses and counterclaim nor did they invoke Frankenmuth's policy provisions that no misrepresentation could defeat Frankenmuth's obligations absence proof that it relied on the insureds misrepresentations as declaired in the policy provisions and Wisconsin statute, nor did Zahrans' attorneys file all of Zahrans available defenses, nor did they inform Zahrans of Frankenmuth's allegations.

A jury trial was commenced and the jury found that misrepresentation occurred. What misrepresentation, noone knows as of now. The district judge found that Frankenmuth did not rely on any misrepresentation by Zahrans and accordingly denied Frankenmuth's motion after verdict to void the policy as a matter of law based on the findings of non-

reliance by the court and based on Frankenmuth's refusal to submit jury questions on its counterclaim and on issue of reliance to the jury.

Zahrans took an appeal to the 7th Circuit which was vested with jurisdiction pursuant to 28 U.S.C. } 1291. The appeal court panel, Honorable John Coffey, Walter Cummings, and James Zagel issued an unpublished order on 3/29/94 affirming the district court order, dismissing Zahrans' lawsuit and remanding the case to the district court for entry of judgement not inconsistent with their opinion.

The district court, upon remand, entered a judgement for Frankenmuth in the amount of $182,888.37 plus interest against Zahrans without a refund of the premiums paid. Zahrans' filed a motion for Rule 60(b) upon fraud and newly discovered evidence but was denied by the district court and was affirmed by the appeal court.

Following the denial of Zahrans' appeal, Frankenmuth filed a writ of execution in the U.S. District Court for the Northern District of Illinois attaching the judgement to Zahrans' residence and properties located in Illinois (Case No. 95-C-0957) (App. p.41-42), assigned to the Honorable Judge Wayne Anderson, who refused to enter rulings on Frankenmuth's motion for execution on Zahrans' personal residence and property due to Frankenmuth's failure to follow the specific procedures and the applicable law. During the pendance of this action, Frankenmuth's attorney, Robert Zietner, was disbarred by the Illinois Supreme Court based on multiple counts of fraud upon the courts.

Frankenmuth's new attorney, Steven Popuch, while the action was still pending before Judge Anderson in the Northern District of Illinois, filed a motion for writ of execution in the U.S. District Court for the Eastern District of Wisconsin before the Honorable Judge Curran. Attorney Popuch wasn't admitted per Local Rule nor was he licensed to practice law in the State

of Wisconsin or the U.S. District Court for the Eastern District of Wisconsin nor did he file his appearance.

Zahrans' retained Attorney John Bickley for representation who filed his motion to be admitted to practice before Judge Curran in that particular case. Although Attorney Bickley was practising in Wisconsin and in the United States District Court for the Eastern District of Wisconsin, Judge Curran denied Attorney Bickley's motion to represent Zahrans, (App. p.39) stating that the federal rules of civil procedures nor the court contemplate the filing of an answer or pleadings by plaintiffs referencing the writ of execution. Judge Curran denied Zahrans' motion to strike Popuch' pleadings from the court file for being not admitted nor licensed.

Frankenmuth's new motion for writ of execution in the United States District Court for the Eastern District of Wisconsin did not comply with Wis. Statue. The district court entered in an order warning Frankenmuth to comply to Wis. Statue or risk entry of dismissal of their motion for the writ of execution and of the dismissal of their action as sanctions for failure to comply with the court's orders. (App. p.38) Judge Curran denied Zahrans' motion to dismiss Frankenmuth's motion for writ of execution filed by Zahrans on 4/18/96 for the reason that there was another pending action for writ of execution in the U.S. District Court for the Northern District of Illinois, Case No. 95-C-0957.

On 5/20/96, Judge Curran, as a sanction, entered an order (App. p.40) denying Frankenmuth's motion for issuance of writ of execution filed on 3/06/96 for failure to comply with court orders to establish that Frankenmuth complied with all the applicable provisions of Wis. Law and further dismissed the entire action with prejudice.

Frankenmuth did not appeal the judge's order of 5/20/96 nor did they move the court pursuant to Rule 60 or to reconsider, the order therefore became final. On December 4,

1996, Frankenmuth filed a new action for writ of execution alleged that the judgment exemplification certificate was filed in Manitowoc County on 4/25/96. (App. p. 44-42) (App. p. 45-46) On that same day, Manitowoc County Sheriff Department took over Zahrans' farm property, cattle, equipment, land, and buildings to execute on Frankenmuth's lien filed on that date in Manitowoc County. Later, Manitowoc County Sheriff Department and Frankenmuth changed their position by stating that they took the action of entering and seizing Zahrans' property upon secret statements that the animals on the farm were starving and the equipment was not properly working. (App. p. 41-42) No statements to that effect were ever produced. The property was finally released and turned back to Zahrans.

Frankenmuth's new writ of execution before the Honorable Judge Curran alleged that Frankenmuth obtained a judgment against Zahrans in the U.S. District for the Northern District of IL in case no. 95-C-0957. (App. p.45-45) The attachments pursuant to Wisconsin Law, filed in Manitowoc County Circuit Court also alleged that the judgement was obtained in Case no. 95-C-0957. Zahrans' objected and requested that they be allowed to answer Frankenmuth's allegations and to counterclaim for damages sustained due to search and seizure of their property by Manitowoc County Sheriff Department and Frankenmuth, absence of any court order and the court denied.

Zahrans' filed their motion in opposition requesting the court to allow them to plead against Frankenmuth, Manitowoc Sheriff Department for seizing their property. Zahrans argued in their motion that the court order of May 20, 1996 precludes Frankenmuth from their ability to reopen the action and file a new motion for the writ of execution pursuant to F.R.C.P. 12(b) on res dujicata grounds, further arguing that the dismissal was with prejudice, pointing to the court order and docket that

the case docket shows the case was closed and that the May 20th order of 1996 was a dismissal with prejudice that constituted the dismissal of the entire matter divesting the district court of jurisdiction over the parties. Zahrans further requested sanctions against Frankenmuth pursuant to Rule 11 for filing unsigned pleadings by a non-licensed and non-admitted attorney in a dismissed action. Zahrans further argued that Frankenmuth were fraudulently seeking enforcement of an alleged begotten judgment in case No. 95-C-0957 in the U.S. Dist. Court for the Northern District of Illinois, an allegation that is not true.

The court, on 2/14/97, denied Zahrans' motions to dismiss based on previous orders and granted Frankenmuth's motion for the writ of execution. (App. p. 43-44) Judge Curran signed an order drafted by Attorney Popuch directing the clerk of the courts of Manitowoc County, Wis. to issue a writ of execution pursuant to a judgment order entered against Zahrans in civil case no. 95-C-0957. (App. p. 45-46) Zahrans immediately appealed which vested the jurisdiction of this action in the court of appeal for the 7th Circuit. Zahrans moved to stay execution pending appeal. The appeal court denied Zahrans' motion. Zahrans paid $208,000 in cash bond for the amount due to avoid the sale of their properties at depressed values.

Zahrans filed actions against the building contractors for a breach of contract who were to rebuild their farm buildings after the tornado and fires for non-performance of contract and against their attorneys for malpractice which resulted in the district court rulings against Zahrans. These cases were pending before the U.S. District Court for the Eastern District of Wisconsin. The district court ruled against Zahrans. Appeals were taken and Zahrans retained Attorney Andy Cohen for representation in these appeals before the appeal court of the United States 7th Circuit Court.

The appeal court, on 9/17/98, issued an order sanctioning Zahrans for pursuing their claims against Frankenmuth and the Sheriff Department. (App. p.1-15) ordering that the briefing in the remaining three (3) appeals be suspended until sanctions are paid. Zahrans paid Attorney Cohen to pay these sanctions and later discovered fraud by Attorney Cohen in that he did not pay the sanctions as was directed nor did he file proper briefs in support of Zahrans' appeals resulting in the appeal court dismissal of their first appeal and in sanctions. Further, Zahrans discovered collusion with Frankenmuth's attorneys by Attorney Cohen.

Zahrans further discovered that Attorney Cohen's representations to Zahrans that because the 7th Circuit panel had issued an interior order directing their clerks to draft orders against Zahrans on their appeals as soon as Zahrans' briefs arrive warranted Attorney Cohen to complain to the chief judge and to move for the disqualification of the panel judges, Bauer, Flaum, and Kanne and that he will petition the U.S. Supreme Court to stay the 7th Circuit panel orders pending a determination by the Supreme Court on motions to stay the appeal court order and a motion for the reassignment of Zahrans' appeal to a different panel or a different circuit based on bias and prejudicial determination against Zahrans by the 7th Circuit disclosed panel. Attorney Cohen never filed these motions and although Attorney Cohen notified Zahrans that he filed the motions with the 7th circuit for reassignment and disqualification of the panel judges, he never did and although he notified Zahrans, he filed a motion to stay the 7th Circuit orders with the Supreme Court and the Honorable Judge John Paul Stevens infact sent a copy of that pleading to Zahrans on November 3, 1998. Zahrans discovered he did not file these motions as he never paid the admittance fees when he forwarded the motion to the Supreme Court as such was returned to Cohen by the U.S. Supreme Court. Cohen failed to

notify Zahrans of any of these developments and when asked why didn't he follow on these motions, he replied that he was not going to wreak his career as told by certain staff members of the panel's clerks.

On December 17, 1998, Attorney Cohen, upon agreement of dismissal by Zahrans, filed a motion to withdraw. Then on 12/18/98, Zahrans moved the court to allow them to present themselves and file their own briefs upon discovery of fraud by Attorney Cohen. The appeal court issued an order on December 22, 1998 (App. p. 16-19) directing that Zahrans may file three Supplementary Briefs in their pending appeals by January 4, 11, and 19, 1999. Zahrans received that order after the holidays, on December 28, 1998. Zahrans further motioned the court for extension of time to file their supplemental briefs due to inadequacy of time and further requested that the court direct Attorney Cohen to turn over the file so that they could prepare their appellate briefs. The court further denied Zahrans' motion for recussal (App. p. 26-28) although Robin Zahran was ill as was proven to the court and the files were not available as Attorney Cohen left town and did not come back until January 6, 1999 and even then refused to turn over the files.

Zahrans were late two (2) days in finalising their first supplemental brief and were denied its filing. (App. p. 23-24) The appeal court further denied Zahrans' second supplemental brief (App. p. 20-22) that was due on 1/11/99 in another related matter which will before this Honorable Court on 10/14/99 upon being late five (5) minutes which was caused by snow storm conditions on that morning.

Frankenmuth did not file a brief in opposition. The appeal panel denied Zahrans' motion to recuse themselves (App. p. 31-32) or to reassign the case to a different panel or to a different circuit court.

On March 6, 1999, the case was submitted to the panel who issued the September 17, 1998 sanction order and whose clerks notified Attorney Cohen that they were directed to discount all of Zahrans' pleadings and draft nonpublished orders finding for Frankenmuth and all the other appellees in the other two pending appeals against Zahrans. On March 25, 1999, the appeal court panel issued a nonpublished order affirming the district court's order. (App. p. 28-33) Zahrans moved the panel for rehearing with the suggestion for rehearing in banc which was denied. (App. p. 34) The panel ruled on the briefs before they ruled on Zahran's motion for recussal or reassignment due to prejudice and the disclosure of the identify of the panel, (App. p.35-36, p.37) contrary to rules of the 7th Circuit and before they granted Attorney Cohen's motion to withdraw.

ARGUMENT

1. The Court below failed to address the issue of legal representation by the lower court.

The appeal court demonstrated bias and prejudice against Zahrans from the inception of this appeal to its conclusion

Zahran's were entitled to legal counsel, the District Court refusal to allow them to be represented and retain their counsel was a violation of their constitutional right to due process and the sixth amendment, the Appeal Court affirmation of the District Court is therefore a depravation of Zahrans constitutional right to legal representation because legal representation is either respected or denied and its deprivation cannot be harmless. *McKaskle v. Wiggns*, 465 US 168, 79 L Ed 2d 122, 104 S. Ct. 944.

The Appeal Court refusal to dismiss Attorney Cohen when Zahrans agreed with him for his dismissal was a violation of that right. The District Court did not allow Zahran to be

represented by an attorney. The Appeal Court on the other hand refused to dismiss Attorney Cohen from representing Zahrans when Zahrans discovered fraud and denied Zahran's motion to take over their files from Cohen forcing them to brief their appeal over one week of time without having access to their files which was in possession of Attorney Cohen. And even then the Court of Appeals denied Zahrans filing because one need not go further than reading the Appeal Panel order of Sept. 17, 1998 app.(1-15).

The District Court refusal to allow Zahran from being represented was further aggravated by Frankenmuth and Manitowoc Sheriff Department seizure of Zahrans farm properties including cattle and machinery to satisfy Frankenmuth judgement on 4/25/1996 resulting in further damage to their dairy business. In violation of Zahrans constitutional right under the fourth amendment which protect property from illegal search and seizure.

While Zahrans were deprived of counsel representation, Frankenmuth new counsel, who took on its representation and upon the disbarment of their earlier counsel for fraud and false pleadings by the Illinois Supreme Court. Frankenmuth's new attorney was unlicensed in Wisconsin and non admitted to practice in the U.S. District Court for the Eastern District of Wisconsin was allowed to file unsigned papers and other filings, one of which he alleged that a judgement against Zahran was obtained in case No. 90-C-0957 in the Northern District of Illinois Appendix and of which the District Court signed the court order allowing the writ to proceed to satisfy that judgement.

2. The Dismissal of Frankenmuth Action was with prejudice. The District and the Appeal Courts lost jurisdiction.

The District Court dismissed Frankenmuth motion for the issuance of a writ of execution. On May 20, 1996 after warning Frankenmuth to abide by court orders on 3/29/96, Frankenmuth did not, and finally the court dismissed the motion for the writ and dismissed the action itself.

The dismissal was with prejudice, Frankenmuth never moved the court to reconsider, nor attempted to file a Rule 60 motion upon mistake in order or judgement, nor appealed that order. The District Court therefore lost jurisdiction and the court docket showed the case was closed. Re-opening the case upon new filings on Dec. 6, 1996 without addressing the order of dismissal was an error as the court lacked jurisdiction.

The Appeal Court did not address the issue of dismissal and side stepped Zahran's arguments and case law citations on that issue. Rule 12(b) of the Federal Rules of Civil Procedures are applicable and clearly prohibited Frankenmuth from filing papers in the same case on res dujacta grounds. Rule 41(c) is applicable to this case and prohibited Frankenmuth from filing new papers in court in that action as the action was adjudicated on merits since the order did not state the "dismissal of the action was without prejudice." The Appeal Court did not address these arguments in its order of 3/25/99.

The District Court granted Frankenmuth Writ of Execution which alleged that the action in Illinois being sought pursuant to a judgement obtained against Zahrans in Case No. 95-C-0957 filed in the U.S. District Court for the Northern District of Illinois. No such judgement was ever obtained in Illinois against Zahran's in this case, in fact the case was finally dismissed by Honorable Judge Andersen, U.S. District Judge for the Northern District of Illinois with prejudice.

Frankenmuth's filings, in that regard were frivolous and fraudulent. Judge Curran in Wisconsin granted the issuance for the writ on that basis. The Appeal Court affirmed the courts

orders, which were made based on erroneous presentations by Frankenmuth.

Federal Rule of Civil Procedure 41 governs the dismissal of actions in the federal courts. Federal Rule of Civil Procedure 41 (b) and (c) state as follows:

(b) Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) Dismissal of Counterclaim, Cross-Claim, or Third Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trail or hearing.

Judge Curran entered his Order dismissing the entire action on May 20, 1996 which stated "IT IS FURTHER ORDERED that this action is dismissed." As the 7th Circuit Court held, "Because the judgement did not otherwise state, the dismissal was on the merits- - with prejudice. *LeBeau v. Taco Bell, Inc.*, 892 F.2d 605, 607 (7th Cir. 1989). Further, when the district court dismisses a complaint without stating whether the dismissal is on the merits, that dismissal becomes a final judgement on the merits under Federal Rule of Civil Procedure 41(b) *Kimmel v. Texas Commerce Bank*, 817 F2d 39, 40-41 (7th Cir. 1987).

Rule 41 (b) puts the burden on the party whose interests are being dismissed to take action. *LeBeau*, at 608. The party

subjected to the dismissal has two different alternatives, the filing of a motion to persuade the district court that the dismissal should be without prejudice, or that the dismissal should be vacated, or in the alternative, to appeal the dismissal. *Id.* In this case, Frankenmuth followed none of those options, but rather proceeded to attempt to lodge a new Petition for Writ of Execution approximately six months later without having filed any motion for relief from the judgement or order.

Based on this, Frankenmuth failed to follow the procedures which the Courts has placed on litigants in order for them to maintain their rights. In this case, Frankenmuth failed to follow the procedural requirements as directed by the district court in order to perfect their Writ of Execution. As Judge Curran noted in issuing his Order of may 20, 1996, the Petition for Writ of Execution was Denied and the action was dismissed for Frankenmuth's failure to comply with the previous Order of Court.

While dismissal of an action is a harsh sanction it has been warranted in situations where counsel and litigants have failed to comply with the orders of the court. In *LeBeau*, the district court dismissed a case for want of prosecution after an attorney for the litigant failed to appear for two status appearances, once because of the lack of opposition to a motion presented by the defendant, and the second due to a clerical docketing error.

3. The District Court Erred in Exercising Jurisdiction over the Parties When it Lacked Jurisdiction Due to the Existence of a Separate Pending Action for the Same Cause of Action in the Northern District of Illinois in case No. 95-C-0957

Filed by Frankenmuth

Frankenmuth on March 11, 1995 filed an action for a writ of execution by its attorney, Robert Zietner. Zahrans retained Attorney Steven Levy for representation. The case

was assigned to the Honorable Judge Wayne Andersen. Zahrans co-operated in discovery and expensed legal fees, time, and resources in that action. While this action was pending before Judge Andersen, Frankenmuth filed their motion for the issuance of a writ of execution before Judge Curran in the Eastern District of Wisconsin in case No. 90-C-337 without dismissing the action in Illinois.

Zahrans arguing for dismissal stated that there was an exact action before Judge Andersen. Judge Curran denied Zahrans' motion filed on 4/18/96, although the motion and action for writ of execution in the Eastern District of Wisconsin was filed after the action was filed in Illinois. The court erred in failing to dismiss the action that was filed at the time there was another action pending for the same cause of action subjecting Zahrans to two actions at the same time and in violation of their due process as they could only submit to one jurisdiction at a time.

Common and Constitutional Law Rules prohibits courts whether state or federal from assuming jurisdiction over a person that is under the jurisdiction of another court for the same cause of action. *Morisada Corp. v. Beidas*. 939 Fed. Supp. 732, *Commercial Union Co., vs. Torbaty*, 955 Fed. Supp 1162. And courts cannot proceed in any case if it lacks jurisdiction because it posses the power to declare laws, and when jurisdiction seizes to exists, the only function remaining to the court is that of announcing the fact and dismissing cause of action. U.S.C.A. Const. Art. 3 { 2. *Steel Co. v. Citizens for a Better Environment*, 181 S. Ct. 1003, 140 L.Ed. 2nd 210. As the District Court should have done of which it failed to do and as affirmed by the Appeal Court.

It is well established law that courts must dismiss a case without ever reading the merits if it concludes that it has no jurisdiction. Judge Curran erred in that he never considered the issue of jurisdiction throughout the entire proceedings after

March 1996, nor ruled on it. *Capital Leasing Co. v. F.D.I.C.*, 999 F 2nd 188 (C.A. 1993). Although the Appeal Court lacked jurisdiction due to the earlier dismissal on May 20, 1996. The motion and the action in front of Judge Andersen should have been stayed before further proceeding before Judge Curran were to continue. The motion that was filed in Wisconsin before Judge Curran should have been dismissed. *Rutlin vs. U.S.*, 849 F Supp. 34 (C.A. 7 WI) Because Zahran's submitted themselves to the jurisdiction before Judge Andersen as Frankenmuth has requested through its action in March 1995.

4. The Court Dismissed the Action and the Dismissal Was Final and Appealable and Lost Jurisdiction on the Merits.

Unconditional dismissal terminates federal jurisdiction except for limited purposes of reopening and setting aside judgement of dismissal within scope allowed by Federal Civil Rule 60(b) and 28 U.S.C.A. *McCall-Bey v. Franzen*, 777 Fed. 2nd 1178 (C.A.7)

The Federal courts has at its disposal array of means to enforce its orders, including dismissal in appropriate case; its powers include those furnished by federal rule and by inherit authority. F.R.C.P 37, 41(B) *Degan v. U.S.*, 116 S.Ct. 1777 517 U.S. 820, 135 L Ed. 2nd 102 on remand *U.S. v. Real Property Located at Incline Village*, 87 F 3rd 400 on remand 958 F Supp. 482. Judge Curran dismissed the action. It was a final dismissal.

Frankenmuth second motion for writ of execution, did rise from the same cause of action which was dismissed. Both claims involve the same operative facts. Thus, Frankenmuth's motion for writ of execution is the same as the earlier one and therefore should have been dismissed and should have been affirmed on appeal.

Under Article 111 of the U.S. Constitution, federal courts adjudicate only ongoing cases and controversies and if plaintiff is unable to establish article 111 standing, court must dismiss case for lack of subject matter jurisdiction. *Paramont Health Systems Inc. v. Wright*, 907 F Supp. 1212 N.D. IL (1995) *Valley Forge Christian College v. Americans United for Seperation of Church and State*, 454 U.S. 464 471-76 102 S. Ct. 752 757-61 20 L.Ed. 2nd 700 (1982) and the party invoking the jurisdiction of the court bears the burden of establishing standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555 559-60 112 S.Ct. 2130 2136 119 L Ed. 2nd 351 (1992).

If the plaintiff is unable to establish standing the court must dismiss the case for lack of subject matter jurisdiction. *Hope Inc. v. County of Dupage IL*, 738 F 2nd 797 804 (C.A. 7 1984) Frankenmuth did not establish that there was an ongoing controversy after May 20, 1996 dismissal nor did it establish that the case was not dismissed with prejudice to give jurisdiction to the court.

Dismissal of Frankenmuth's action for failure to follow court orders become the law of the case, and when Frankenmuth failed to appeal, it was precluded from filing a new action against the same parties (Robin Zahran and Karen Zahran) in hope that jurisdictional defect had been cured. *U.S. v. Mercedes Benz Roadster*, 2 F. 3rd 241 (C.A. 7, 1993) also *U.S. v. Golden Elevator Inc.* 27-F3d 301(C.A. 7,1994)

Because once the court dismissed the action and Frankenmuth did not appeal or move pursuant to Rule 60(b) and after time expired within the prescribed time for appeal, the district court's dismissal became valid and became the law of the case and final judgement on merits. *Avitia v. Metropolitan Club of Chicago Inc.*, 924 F 2nd 689 691 (C.A. 7 1991)

It is well established law that the courts may not exercise jurisdiction over parties after time for filing of notice of appeal has passed. F.R.A.P. Rule (4) 26(b) and 28 U.S.C.A.

Torres v. Okland Scavenger Co., 108 S. Ct. 2405 487 U.S. 312 101 L Ed. 2nd 285.

Frankenmuth's filing of a new motion for issuance of a writ of execution in an apparent hope that the jurisdictional defect of the court had been cured is misplaced and erroneous conclusion and is not an effective way to alter the order of dismissal of the district court by ignoring the result and trying again by filing an identical action with hopes to obtain a different result.

Article 111 of the U.S. Constitution requires the federal courts only to decide disputes that present actual on-going cases of controversies. *Lewis v. Continental Bank Corp.*, 110 S. Ct 1249 1253 (1990) The district court lacked jurisdiction to act on Frankenmuth's action as it had made it clear in its order of 5/20/96 that the case is over through its order of dismissal. *Smith Bay v. Hospital Administrator*, 841 Fed 2nd 751, 755-56 (C.A. 7, 1988) *Hope v. United States*, 43 Fed. 3rd 1140 1142 (C.A. 1994)

5. The Appeal Court panel demonstrated bias and prejudice throughout its rulings and were predisposed to rule against Zahrans

The Appeal Court panel was not the original panel in this case. Their order of Sept. 17, 1998 clearly shows that they held bias tendencies against Zahrans and in a way appeared that they will be ruling against Zahrans in their appeals evidenced by their orders and refusal to allow Zahrans more than 10 days over the Holidays to prepare their appeals without the file.

It's important to notice that the panel is not the original panel that determined Case No. 90-C-337. Constitutional protection enforcement is mandatory prerequisite to enforcing the constitutional protections that distinguishes democracy form tyranny including those of the judiciary if it steps out of line and

the rule of law because the rights of citizens should evenly be measured to achieve equal protection under the law.

The law, and the Constitution expects to fulfil its promised protections because it is the only truly friend of those who need protection and it is a voice of reason. The Constitutional protections and the citizens Bill of Rights must not be denied to no one and it is the moral privilege of those who sit on the Supreme Court to assure that result. Zahrans rights were violated, there was no meaningful review of the lower court orders, simply the Appeal Court did not want to review in violation of Zahrans right for a review. The Appeal Court review wasn't meaningful as they were predisposed before they even seen the appeal briefs evidenced by certain of the panels law clerk statements to attorney Cohen that they had an order and direction to automatically draft orders against Zahrans.

The panel decisions trashed Zahrans 4th Amendment rights of protection to their property rights against unreasonable search and seizure when Frankenmuth and Manitowoc Sheriff Dept. took over Zahrans property without court order or permission and were sanctioned by the District Court and the Appeal Court. These acts were not reasonable when both of them took possession of Zahrans property on 4/25/96 without a court order.

The Appeal Court should not change or adjust the law and the Constitutional doctrine so as to produce the desired results. Our Constitution and Bill of Rights simply do not allow a ruling of guilty as accused without proof, nor does it give the authority to the Appeal Court to predetermine appeals before they read the appeal briefs and applied meaningful review procedures.

Our Constitution is our protector and our guiding torch from the executive, legislative and judicial branches of government, because if they stray from the norm the

Constitution rises and reminds us all that equal justice under the law is a right that is bestowed on us all and justice is not dependable on personalities, influences and other prejudices.

The plain language of the equal protection clause of the 14th amendment is to prohibit prejudicial disparities before the law, protection is applicable to the judiciary with equal force as it applies to the executive and legislative branch of government.

The panel of the 7th Circuit demonstrated its ineffectiveness in applying the law and engaged in nothing more than attacking Zahrans because Zahrans pursued their rights and pursued pleadings to do justice as is required and construed by the F.R.C.P.

Serious erosions of respect for the law occur if the courts do not care about the affects of its actions and applications of the rule of law because the courts teaches by example and declares laws, and therefore must be mindful of its decisions affect and can not betray the values it is suppose to uphold.

Because if our Constitutional rights are allowed to be sacrificed in the name of perceived exigency we usually come to regret it later because we had instituted it as a course and that's why minimum competence and impartiality must be exercised and demonstrate by the courts.

In order to protect the Constitutional rights of fair and proper judicial review. The review must be fair, impartial, unmotivated by other concerns or prejudices, otherwise it is meaningless, Could the Appeal Court panel state that Zahrans had had a fair opportunity and a meaningful review of their appeals. Zahrans doubt it very much.

James Madison but it eloquently when he stated, " independent tribunals of justice . . . will be an impartial bulwark against . . . every encroachment upon rights, expressly stipulated for in the Constitution".

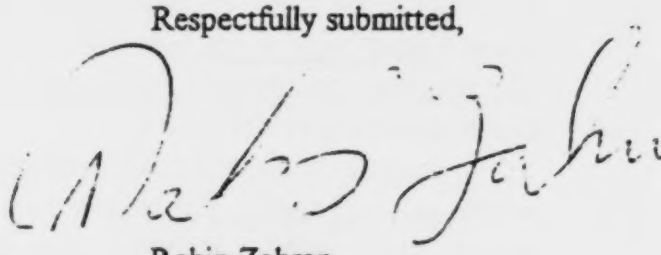
No proper judicial review means no protection of fundamental rights as the panel wouldn't have known what Zahrans basic rights were to be protected, or have been violated, because judicial powers should be exercised to enforce the Constitution and the Bill of Rights provisions not those who are especially tied.

In summary as this court held in many court cases appearance of judicial misconduct or impartiality by any judge should be enough for disqualification of that judge from ruling on the subject matter of controversy.

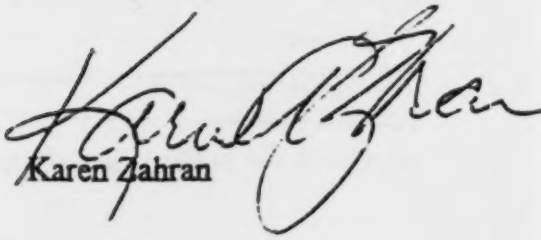
CONCLUSION

For all the above reasons and the facts and the law involved these petitioners pray that this Honorable Court grant *certiorari* to review this important matter as outlined and reverse the Seventh Circuit and or order briefing in this matter in combination with the other two appeals due to the infringement on Zahrans Constitutional rights and rights to due process.

Respectfully submitted,



Robin Zahran



Karen Zahran

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UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604
September 17, 1998

Before

Hon. **William J. Bauer**, Circuit Judge
Hon. **Joel M. Flaum**, Circuit Judge
Hon. **Michael S. Kanne**, Circuit Judge

ROBIN ZAHRAN and KAREN ZAHRAN, Plaintiffs-Appellants,	)	
	)Appeal from the United States District Court for the Eastern District of Wisconsin	
No.97-1712 v. FRANKENMUTH MUTUAL INSURANCE COMPANY, Defendant-Appellee	)	No. 90 C 337
	)	Thomas J. Curran, Judge

ROBIN ZAHRAN and KAREN ZAHRAN Plaintiffs-Appellants,	)	
	)Appeal from the United States District Court for The Northern District for Illinois, Eastern Division	
No. 98-1905 v. FRANKENMUTH MUTUAL INSURANCE COMPANY, THOMAS H. KOCOUREK, sheriff of Manitowoc County, Wisconsin and his agents and representatives andthe Corporation of Manitowoc County, Wisconsin, ROBERT ZEITNER, et al., Defendants-Appellee	)	No. 97 C 978
	)Harry D. Leinenweber, Judge	

ORDER

The following are before the court:

1. District court's order of February 14, 1997, granting defendant's motion for issuance of a writ of execution case No. 97-1712.

2. Plaintiffs-appellants' jurisdictional memorandum in support of their position that appeal No. 97-1712 should not be dismissed, filed on April 24, 1997, by plaintiffs-appellants pro-se.

3. Plaintiffs-appellants' opening brief in appeal No. 98-1905, filed on August 7, 1998, by counsel for plaintiffs-appellants.

4. Plaintiffs-appellants' motion to consolidate appeals No. 97-1712 and No. 98-1905, filed on April 27, 1998, by plaintiffs-appellants pro-se.

5. Response in opposition to the motion to consolidate, filed on May 6, 1998, by counsel for defendant-appellee Frankenmuth Mutual Insurance Co.

6. Response in opposition to the motion to consolidate, filed on May 8, 1998, by counsel for defendant-appellee Thomas Kocourek.

7. Reply to the response in opposition, filed on May 13, 1998, by plaintiffs-appellants pro-se.

8. Motion for summary affirmance in appeal No. 98-1905,filed on August 25, 1998, by counsel for defendant-appellee Frankenmuth Mutual Insurance Co.

9. Motion for summary affirmance in appeal No. 98-1905, filed on September 15, 1998, by counsel for defendants Steven L. Popuch Robert Zeitner and the Law Offices of Swift, Popuch & Sinclair.

I. BACKROUND

A. Prior Litigation

Following a 1989 storm that damaged their Wisconsin farm property, Robin and Karen Zahran filed a diversity action against their insurance company, Frankenmuth Mutual Insurance co. ("Frankenmuth"), seeking damages and costs of $537,000, plus interest and attorneys' fees. The Zahrans' claim was docketed on January 19, 1990, as cause No. 90 C 337 in the United States District court for the Eastern District of Wisconsin. They alleged bad faith and breach of contract by Frankenmuth for its refusal to pay for all of the damages claimed under their policy. Frankenmuth counter sued to recover $182,888 it had already paid out, alleging that the policy was void because of the Zahran's fraud, concealment, and material misrepresentation regarding the claim.

The district court dismissed without prejudice Frankenmuth's counterclaim because the insurance company had failed to submit the separate jury instructions and special interrogatories that the court had requested. At trial, however, the jury returned a special verdict that Frankenmuth was not obligated to pay because the Zahran's had indeed committed fraud in submitting their insurance claim. The Zahrans appealed the jury's decision (appeal No. 92-1778), and Frankenmuth cross-appealed the district court's dismissal of their counterclaim (appeal No. 92-1848). On March 28, 1994, this Court affirmed the jury's verdict for Frankenmuth but reversed the district court's dismissal of Frankenmuth's counterclaim, remanding the case with instructions to enter judgement in favour of Frankenmuth. *See Zahran v. Frankenmuth Mutual Ins. Co.*, Nos. 92-1778 & 92-1848, 1994 WL 107909 (7th Cir. Mar. 28, 1994) ("*Zahran I*") (unpublished disposition). Pursuant thereto, the district court entered judgement in case No. 90 C 337 on June 29, 1994.

Upon remand, the Zahrans filed motions for relief, which were denied on July 18, 1994. *See* Fed. R. Civ. P. 60(b). Karen Zahran appealed the denial of their rule 60(b) motion,

docketed as appeal No. 95-2588 ("*Zahran III(a)*"), but on April 22, 1997, this Court concluded that all of the issues raised had been considered previously. Consequently, the decision of the district court was summarily affirmed. While this Court concluded that the appeal was frivolous, it declined to impose Rule 38 sanctions. *See Zahran v. Frankenmuth Mutual Ins. Co.*, Nos. 95-2588 & 96-2270, 1997 WL 205381, at *2-4 (7th Cir. Apr. 22, 1997) ("Zahran III (a) & (b)") (unpublished disposition); *see also* Fed. R. App. P. 38; Fed. R. Civ. P. 60(b).

During the pendency of cause No. 90 C 337 in the district court, two fires broke out at the Zahran's Wisconsin property: one in March 1990, and the other in July 1990. Frankenmuth paid for a portion of the losses claimed, but because it did not pay the entire amount, the Zahrans brought a second suit against Frankenmuth alleging bad faith and breach of contract. The claim was docketed in the United States District Court for the Eastern District of Wisconsin as cause No. 91 C 808. At trial, the jury returned a special verdict in favour of Frankenmuth on the Zahrans' bad faith claim, but deadlocked on the questions of breach of contract. Judge Curran declared a mistrial; at the second trail the jury found for Frankenmuth on the Zahrans' breach of contract claim. The Zahrans appealed but this court affirmed on April 25, 1995. *See Zahran v. Frankenmuth Mutual Ins. Co.*, No. 93-2852, 1995 WL 241392 (7th Cir. Apr. 25, 1995) *("Zahran II")* (unpublished disposition).

On August 9, 1994, approximately one month after Judge Curran denied their Rule 60 (b) motion for relief from judgement in case No. 90 C 337, the Zahrans filed a seven-count complaint, docketed in the Northern District of Illinois as cause No. 94 C 4827. This claim also arose out of the tornado and fire damage to the Zahrans' Wisconsin farm during 1989 and 1990. In addition to Frankenmuth, the Zahrans named as defendants: two Frankenmuth claims adjustors; two

independent claims adjustment firms, General Adjusting Bureau ("GAB") and Crawford and Company ("Crawford"), that had been engaged by Frankenmuth to review the Zahrans' claims; a GAB claims adjustor; a building contractor hired by the GAB claims adjustor to inspect the Zahran's property; a Crawford claims adjustor who inspected the Zahrans' property; the law firm engaged by Frankenmuth to represent it in their counterclaim against the Zahrans; two attorneys with that firm; and the Manitowoc County sheriff.

The complaint alleged breach of fiduciary duty, conspiracy to defraud the Zahrans of their property, racketeering, slander, libel, interference with contractual relations, violations of the Fair Credit Reporting Act, *see* 15 U.S.C. § 1681 *et seq.*, and loss of credit rating. *See Zahran v. Frankenmuth Mutual Ins. Co.*, No. 94 C 4827, 1995 WL 535088, at *1-2 (N.D. Ill. Dept. 5, 1995). The district court concluded that jurisdictional infirmities and principles of *res judicata* and collateral estoppel barred the Zahrans from litigating and relitigating the issues raised in their complaint, and therefore dismissed the claims. *See id.* at *3-6; *see also Zahran v. Frankenmuth Mutual Ins. Co.*, No. 94 C 4827, 1996 WL 182563 (N.D. Ill. Apr. 15, 1996) (unpublished disposition). In addition, Judge Grady imposed rule 11 sanctions against the Zahrans for attorneys' fees, costs, and expenses incurred in the defense of the case (to date, it would appear that the sanctions remain unpaid). Judge Grady also ordered the Zahrans "not to initiate any further action, arising out of or relating to the May 1989 windstorm on March 1990 fire losses." *Zahran v. Frankenmuth Mutual Ins. Co.*, No. 94 C 4827, 1997 WL 53107, at *3(N.D. Ill. Feb. 6, 1997) (unpublished disposition).

The Zahrans' appeal from Judge Grady's dismissal of their complaint, docketed in this Court as appeal No. 96-2270 ("*Zahran III (b)*"), was consolidated for disposition with *Zahran III (a)*, Karen Zahran's appeal from Judge Curran's

denial of their Rule 60 (b) motion in cause No. 90 C 337. The decisions of the respective district courts were affirmed by this Court in an unpublished disposition on April 22, 1997. *See Zahran III (a) & (b)* , 1997 WL 205381, at *2-4.

B. The Instant Litigation

1. Cause No. 90 C 337: Zahran IV

While Karen Zahran was appealing *Zahran III (a)*, Frankenmuth registered the June 29, 1994 , judgement in the Northern District of Illinois (the Zahrans reside in Oak Brook, Illinois). *See* 28 U.S.C. § 1963. Frankenmuth was able to garnish $3,408.83 from a bank account in partial satisfaction of the judgement. Frankenmuth next filed a rule 69(a) motion for a writ of execution in the United States District Court for the Eastern District of Wisconsin, where the judgement was rendered and where the Zahrans' dairy farm is located. *See* Fed. R. Civ. P. 69(a). The total sought as of December 6, 1996, the date on which the motion was filed, was: $182,888.37 for the judgement itself (not including the offset for the garnishment); $25,519.53 in interest from the June 29, 1994, entry of judgement until November 1996; [1] and $1,637.50 in costs taxed against plaintiffs.

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1 Under Wisconsin law, which applied in this diversity action, *see Kuehn v. Childrens hospital,* 119 F. 3d 1296, 1300-01 (7th Cir. 1997); *First Bank Southeast, N.A. v. Predco, Inc.,* 951 F 2d 842, 846 in. 2 (7th Cir. 1992); *Hunker v. Royal Indemnity Co.,* 204 N.W. 2d 897, 901-04 (Wis. 1973), a writ for the execution of a money judgement permits the judgement creditor to obtain interest on the judgement, which accrues at the rate of 12% per year on the amount recovered, from the date of entry until the judgement is paid. *See* Wis. Stat. § 815.05(8) (West 1998); *Burlington Northern R.R. Co. v. City of Superior,* 464 N.W. 2d 643 (Wis. 1991).

Judge Curran granted Frankenmuth's Rule 69(a) motion on February 14, 1997, but on March 24, 1997, the court received a letter from the Zahrans which is construed as a motion for an extension of time to file a notice of appeal. The district court granted the extension, *see* Fed. R. App. P. 4(a); Fed. R. Civ. P. 77(d), and on March 28, 1997, the Zahrans once again appealed. The action was docketed by this Court as appeal No. 97-1712 *("Zahran IV")*. On April 14, 1997, this Court called for jurisdictional statements explaining why they appeal should not be dismissed, and suspended briefing pending resolution of the question.

On April 4, 1997, the Manitowoc County Sheriff's Office received the writ of execution granted by Judge Curran; Frankenmuth thereafter entered a lien against Zahrans' property. *See* Wis. Stat. §§ 815.05, 815.195. The Zahrans filed an emergency motion for a stay pending appeal, which was denied by this Court on May 23, 1998. The Zahrans then satisfied the judgement prior to the sheriff's sale: a notarized "Satisfaction of Judgement" contained in the record of appeal No. 98-1905 declares that the judgement was "fully paid and satisfied" and discharged on May 29, 1997.

2. Cause No. 97 C 978: Zahran V

On February 12 1997, less than a week after Judge Grady entered sanctions against the Zahrans in what was to become *Zahran III(b)*, the Zahrans filed yet another complaint in the United States District Court for the Northern District of Illinois, docketed as cause No. 97 C 9789. Named as defendants in the action were Frankenmuth; the law firm engaged by Frankenmuth in its efforts to execute the judgement entered pursuant to *Zahran I;* two attorneys who worked for the firm; the Manitowoc County sheriff and his agents; and Manitowoc County and its agents. Count one of the complaint alleged abuse of process by all defendants in Frankenmuth's efforts to obtain the writ of execution; count two alleged

violations of the Fair Debt Collection Practices Act ("Act"), 15 U.S.C. § 1692 *et seq.*, by Frankenmuth, its law firm, and its attorneys in attempting to execute the judgement.

On August 11, 1997, Judge Leinenweber dismissed the complaint against Frankenmuth, its law firm, and its attorneys; and on March 11, 1998, the court granted the remaining defendants' motions for summary judgement on court two of the complaint, dismissed count one of the complaint against the remaining defendants for lack of jurisdiction under the *Rooker-Feldman* doctrine, and granted Frankenmuth's motion for Rule 11 sanctions. The court also entered an order requiring the Zahrans to seek permission to file any new claims against these same defendants. *See* Fed.R. Civ. P. 11. The Zahrans' appeal was docketed in this Court as appeal No. 98-1905 *("Zahran V")*.

On April 27, 1998, the Zahrans filed a motion in this Court to consolidate *Zahran IV and Zahran V*. Invoking principles of judicial economy, they argue that both actions arise out of the same set of operative facts. The motion is opposed by defendants Frankenmuth and Manitowoc County Sheriff Thomas Kocourek; they contend that notwithstanding distant points of common origin in this litigation, *Zahran IV* stems from a writ of execution entered pursuant to this Court's decision in *Zahran I* by Judge Curran in the Eastern District of Wisconsin, while *Zahran V* arises in large measure from the execution of a search warrant issued by a state court judge.[2]

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[2] The Zahrans are also involved in four additional appeals now pending in this Court. Appeals No. 97-3710 and No. 98-2123, which have been consolidated, and appeals No. 97-3813 and No. 98-2122, which have also been consolidated, arise from a complaint docketed as cause No. 95 C 334 in the United States District Court for the Eastern district of Wisconsin.

II. DISCUSSION

A. Jurisdiction to consider Zahran IV

Federal appellate courts have jurisdiction over final orders of the district courts. See 28 U.S.C. § 1291. Generally, an order is final for purposes of the statute if it "ends the litigation on the merits and leaves nothing for the district court to do but execute the judgement." *Baltimore Orioles, Inc. v. Major League Players Ass'n,* 805 F. 2d 663, 666 (7th Cir. 1986). Post judgement proceedings, however, are treated for appellate purposes as separate lawsuits. Orders entered during such proceedings may be appealed, but only if they are final orders. In this regard, a post-judgement order need not dispose of all of the issues raised in the order. *See, e.g., Central States, S.E. & S.w. Areas Pension Fund v. Express Freight Lines, Inc.,* 971 F.2d 5,6 (7th Cir. 1992); *Transportation Cybernetics, Inc. v. Forest Transit Comm'n,* 950 F.2d 350,352 (7th Cir. 1991); *S.E.C. v. Suter,* 832 F.2d988, 990 (7th Cir. 1987). The district court's order of February 14, 1997, granted Frankenmuth's motion for a writ of execution and denied the Zahrans' objection to the motion. Ten days later, *see* Fed. r. Civ. P. 62(a), the writ of execution issued. The February 14 order is thus a final, appealable, post-judgement order.

Nevertheless, it is unclear whether the May 29, 1997, satisfaction of judgement in cause No. 90C 337 has mooted the appeal in *Zahran IV,* thereby depriving this Court of jurisdiction for want of a live case or controversy. *See* U.S. Const., art. III, § 2; *Wegscheid v. Local Union* 2911, 117 F.3d 986, 990 (7th

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It is impossible at this stage of the litigation - no records on appeal have yet been transmitted - to determine the extent to which the actions are related to the matters discussed herein. Accordingly, these appeals shall be permitted to proceed for the time being.

Cir. 1997); 13A Wright & Miller, Federal Practice and Procedure, § 3533.2 (1955 & Supp. 1998); If the Zahran's payment in satisfaction of the judgement represents an abandonment of their challenge to the validity of the writ of execution, *Zahran IV* is moot and will be dismissed.

Accordingly, the parties in *Zahran IV* are ordered to provide statements and memoranda explaining why, in light of the satisfaction of judgement, this Court should not dismiss *Zahran IV* as moot.

B. The Merits of Zahran V

Zahran V arises from a state court's issuance in April 1996, of a search warrant based on probable cause to believe that the Zahrans were violating Wisconsin statutes regulating the care and treatment of farm animals. *See* Wis. Stat. §§ 951.13-.16 (West 1998). The Manitowoc County sheriff declared at the probable cause hearing that he had observed an inordinate number of calves and cattle on the Zahran's farm that were either underweight or dead (apparently of starvation), and that the feeding equipment and shelter on the farm appeared to be in disrepair and unstocked. The Zahrans, however, argued before the district court that officials of Manitowoc County, including the sheriff, conspired with Frankenmuth to seize the Zahrans' property in satisfaction of the judgement entered in cause No. 90 C 337, despite the lack (at the time) of a valid writ of execution. They further allege that the sheriff was driven by ethnic animus (Mr. Zahran is Arabic); that the defendants tricked the state court judge into issuing the search warrant; and that an affidavit filed in he district court by Robin Zahran provides ample evidentiary support for these allegations.

While the Zahrans contend that the district court erred in granting summary judgement in favour of the defendants, *see Waldredge v. American Hoechst Corp.*, 24 F.3d 918, 920-22 (7th Cir. 1994), they misconstrued the district court's ruling. Judge Leinenweber dismissed the complaint against

Frankenmuth in cause No. 97 C 978 on August 12, 1997, based on principles of *res judicata*, collateral estoppel, and the *Rooker-Feldman* doctrine. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *Brzostowski v. Laidlaw Waste Sys., Inc.*, 49 F.3d 337, 338 (7th Cir. 1995); *Meyer v. Ridgon*, 36 F.3d 1375, 1379 (7th Cir. 1994). After further briefing by the remaining litigants, the district court again concluded that it was being asked, in essence, to review the state court's decisions regarding the search warrant, thereby raising the jurisdictional bar imposed by *Rooker-Feldman*. *See Feldman*, 460 U.S. at 482-84; *GASH Assoc. v. Village of Rosemont*, 995 F.2d 726, 728-29 (7th Cir. 1993); *Ritter v. Ross*, 992 F.2d 750, 753-43 (7th Cir. 1993).

On appeal, the Zahrans have invited this Court to determine for itself whether the evidence supports their conclusion that the defendants duped the state court judge and that the search warrant should never have issued. A *de novo* review of the record in *Zahran V* , taking all well-pleaded allegations as true and drawing all reasonable inferences in the Zahrans' favor, reveals no basis on which to conclude that the district court misapprehended the nature of the requested relief. *See Kamilewicz v. Bank of Boston Corp.*, 92 F. 3d 506, 509-10 (7th Cir. 1996). To the contrary, the district judge correctly determined that the injury alleged was caused by the state court's decision to issue, and its subsequent refusal to vacate, the search warrant. Where, as here, the harm giving rise to the complaint stems from a state court judgement or is "inextricably intertwined" with the merits of that decision, *Feldman*, 460 U.S. at 483 n. 16, *Rooker-Feldman* precludes the lower federal courts from reviewing the state court's judgement. *See Garry v. Geils*, 82 F. 3d 1362, 1365-66 (7th Cir. 1996); *see also Centres, Inc. v. Town of Brookfield*, 148 F.3d 699, 702-03

(7th Cir. 1998); *Homola v. McNamara,* 59F.3d 647, 650-51 (7th Cir. 1995).

Summary affirmance is an exception to the normal consideration of a matter of appeal, and would be employed only where the propriety of such action is clear and where the "position of one party is so clearly correct as a matter of law that no substantial question regarding the out come of the appeal exists." *Williams v. Chrans*, 42F.3d 1137, 1139 (7th Cir. 1994) (internal quotation and citation omitted). Despite this stringent standard, summary affirmance in the matter is appropriate. The Zahrans have entirely misperceived the basis on which their abuse of process claims were resolved by the district court; a call for briefs by the Court would be "nothing but an invitation for the parties to waste their money and the court's time." *Mather v. Village of Mundelein*, 869 F.2d 356,357-58 (7th Cir. 1989); *see also Taylor v. city of New Albany,*979 F.2d 87 (7th Cir. 1992). Accordingly, the decision of the district court is summarily affirmed.

C. Rule 38 Sanctions

This circuit imposes a two-part test to determine the propriety of appellate sanctions. First, the court must conclude that the appeal is frivolous; and second, that sanctions are appropriate. *See Depositor v. Mary M. Holloway Foundation,* 36 F.3d 582, 588 (7th Cir. 1994). An appeal is frivolous when "the result is foreordained by the lack of substance tot he appellant's argument," *Mars Steel Corp. v. Continental Bank N.A.*, 880 F.2d 928, 938 (7th Cir. 1989) (en banc), or when the appeal "merely restates arguments that the district court properly rejected," *A-Abart Elec. Supply, Inc. v. Emerson Elec. Co.*, 956 F.2d 1399, 1406 (7th Cir. 1992) (internal quotation and citation omitted). In determining whether sanctions are appropriate, the Court generally requires some indication of bad faith, suggesting that the appeal was prosecuted with no reasonable expectation of altering the district court's judgement

and for purposes of delay, harassment, or out of sheer obstinacy. *See Flexible Mfg. Sys. Pty., Ltd. v. Super Products Corp.*, 86 F.3d 96, 101 (7th Cir. 1996); *Lorentzen v. Anderson Pest Control*, 64 F.3d 327, 331 (7th Cir. 1995); Depositor, 35, F.3d at 588.

Briefing in *Zahran V* was suspended shortly after counsel for plaintiffs-appellants filed their opening brief. Because of the early stage of the litigation on appeal in *Zahran V* and because "the line between bad faith and mere ineptitude is often difficult to ascertain," *Bacon v. American Fed'n of State, County, and Mun. Employees counsel*, 795 F.2d 33,35 (7th Cir. 1986) (Ripple, J., concurring in part and dissenting in part), the Court declines to impose monetary sanctions based on the Zahrans' appeal of *Zahran V*. *See* Fed R. App. P. 38, advisory committee notes; *McDonough v. Royal Caribbean Cruises, Ltd*, 48 F. 3d256, 258-59 (7th Cir. 1995) (court of appeal may call for sanctions on its own motion). Pursuant to this Court's Internal Operating Procedure Four, however, the defendants in this matter will be awarded costs reasonably incurred in defending this appeal.

The ability to sanction vexatious litigants falls within the inherent power of the federal courts. *See Chambers V. NASCO, Inc.*, 501 U.S. 32, 43-46 (1991); *Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533, 540-54 (1991). In this regard, the courts are obligated to allocate their resources so as to assure that the interest of justice are served and the courthouse doors remain open to all, not simply to the relentless. *See In re McDonald*, 489 U.S. 180, 184 (1989); *Procup v. Strickland*, 792 F.2d 1069, 1073-74 (11th Cir. 1986) (en banc) (per curiam); *In re Martin-Trigona*, 737 F.2d 1254, 1261-62 (2d Cir. 1984); *Ruderer v. Fines*, 614 F.2d 1128, 1130-32 (7th Cir. 1995); *Support Systems Int'l, Inc. v. Mach*, 45 F.3d 185 (7th Cir. 1995).

Year after year, the Zahrans have refused to accept the adverse judgements handed them by the various courts of this circuit. Their repeated response has simply been to file another suit in a different district court, despite repeated determinations that the actions are meritless or are otherwise barred from relitigation.

Accordingly, **IT IS ORDERED** that:

1. the Zahrans shall submit to this court by noon on September 30, 1998, a list and description of all of the sanctions imposed against them, either individually or jointly, by any federal court in this circuit, together with a statement of the amounts paid on each of these awards and the dates on which they were paid. Pursuant thereto, the clerks of the federal courts in this circuit are hereby instructed to return unfiled any documents tendered by or on behalf of the Zahrans,[3] either jointly or individually, until the Zahrans furnish the Court with this list and demonstrate that all such sanctions have been paid in full;

2. upon compliance with the preceding directives, the Zahrans shall be required to obtain leave of this Court before filing in any federal court in this circuit another sit against any of these defendants or their agents, arising out of the 1989 and 1990 storm and fire damage to the Zahrans' farm. Pursuant thereto, the Zahrans must submit to the clerk of this Court a motion for leave to file any such suit, which motion shall be accompanied by copies of the proposed complaint and this order. The motion must either (a) be prepared and filed by

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[3] An exception is made for criminal cases in which the Zahrans, either individually or jointly, are defendants, or for any applications for writs of habeas corpus that the Zahrans may wish to file. See Support Systems Int'l, Inc. v. Mach, 45 F.3d 185, 186 (7th Cir. 1995).

a licensed attorney, or (b) if filed by the plaintiffs(s) *pro se,* be accompanied by a memorandum of law in support of their claims , which shall include an affidavit certifying that the claims they seek to present are not frivolous and have never before been raised in a prior suit;

3. the Zahrans, either individually or jointly, shall be authorized to submit, no earlier that two years from the date of this order, a motion to modify or rescind this order; and

4. the Zahrans are instructed that the federal courts of this circuit, including this Court, reserve the right to initiate contempt proceedings against them if they continue to file new actions or otherwise act in violation of this order.

See, e.g., Verdone, 73 F.3d at 674-75; *In re Kozol,* 73 F.3d 124 (7th Cir. 1995); *Sloan v. Commissioner,* 53 F.3d 799, 800 (7th Cir.1995*); Mack,* 45 F.3d at 186-87.

IT IS FURTHER ORDERED that the motion to consolidate appeals No 97-1712 *(Zahran IV)* and No. 98-1905 *(Zahran V.)* is **DENIED.**

IT IS FURTHER ORDERED that the parties in appeal No. 97-1712 *(Zahran IV)* shall file statements of position and memoranda explaining why the appeal should not be dismissed as moot following the satisfaction of judgement in cause No. 90 C 337. The parties' statements of position and memoranda shall be filed with this Court by noon on September 30, 1998.

IT IS FURTHER ORDERED that defendants' motions for summary affirmance of the district court's order in cause No. 97 C 978 are **GRANTED**. The decisions of the district court underlying appeal No. 98-1905 (*Zahran V*) are hereby summarily affirmed. Costs reasonably incurred in appeal are awarded to the defendants in *Zahran V*, *see* Fed. R. App. P. 39, who are directed to file their statements of costs by noon on September 30, 1990.

SO ORDERED.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
December 22, 1998
Before
Hon. **William J. Bauer**, Circuit Judge
Hon. **Joel M. Flaum**, Circuit Judge
Hon. **Michael S. Kanne**, Circuit Judge

ROBIN ZHARAN and KAREN ZAHRAN, Plaintiffs-Appellants,	)Appeal from the United
No. 97-1712	)States District Court for
v.	)theEastern District
FRANKENMUTH MUTUAL INSURANCE COMPANY, Defendant-Appellee.	)of Wisconsin
	) No. 90 C 337
	)Thomas J. Curran,
	) Judge
ROBIN ZAHRAN and KAREN ZAHRAN Plaintiffs-Appellants,	)Appeal from the United
	)States District Court
	)for The Eastern District
97-3710 & 98-2123	)of Wisconsin.
v.	)
GERALD G. SCHMIDT, JR., individually and the law firm of SCHMIDT, DARLING & ERWIN, MARJAN R. KMIEC, individually, and the law firm of KMIEC LAW OFFICE, ROBERT C. BURRELL, individually and the law firm of BORGELT, POWELL, PETERSON	) No. 95 C 334
	)Charles N. Clevert,
	) Judge

& FRAUN, et al., Defendants-Appellees	)
ROBIN ZAHRAN and KAREN ZAHRAN, Plaintiffs-Appellants,	))Appeal from the United)States District Court for)the Eastern District of
No. 97-3813 & 98-2122 v.	)Wisconsin.))
CLEARY BUILDING CORPORATION, Wisconsin Corporation, and RALPH UECKER AND SONS, INCORPORATED, Defendants-Appellees	)) No. 93 C 543)))Charles N. Clevert,) Judge

Upon consideration of the **EMERGENCY MOTION TO INTERVENE AND TO AMEND PLAINTIFFS-APPELLANTS' BRIEFS FILED ON AUG. 7, 1998, CEC. 4, 1998, DEC. 15, 1998 AND DEC. 16, 1998, REFERENCING THE ABOVE APPEALS. BASED ON APPELLANTS COUSEL INADEQUACY, LACK OF PREPARATION, FRAUD, AND MISREPRESENTIONS AND THE FILING OF INADEQUATE BRIEFS,** filed on December 18, 1998, by the pro se appellants,

IT IS ORDERED that the motion is **GRANTED.** Appellants are hereby **GRANTED** leave to file supplemental briefs in these matters, which briefs shall not exceed 7,000 words, pursuant to Fed. R. App. P. 32(a) (7) (B) (i).

Briefing is these matters shall proceed as follows:

1. Appellants' supplemental brief in No. 97-1712 shall be filed by January 4, 1999.

2. Appellants' supplemental brief in Nos. 97-3710 and 98-2123 shall be filed by January 11, 1999.

3. Appellants' supplemental brief in Nos. 97-3813 and 98-2122 shall be filed by January 19, 1999.

4. Appellees' in No. 97-1712 shall file their response brief by February 4, 1999.

5. Appellees' in Nos. 97-3710 and 98 2123 shall file their response brief by February 11, 1999.

6. Appellees' in Nos. 97-3813 and 98-2122 shall file their response brief by February 19, 1999.

7. Appellants' in No. 97-1712 shall file their reply brief, if any, by February 18, 1999.

8. Appellants' in Nos. 97-3710 and 98-2123 shall file their reply brief, if any, by February 25, 1999.

9. Appellants' in Nos. 97-3813 and 98-2122 shall file their reply brief, if any, by March 5, 1999.

Appellants are advised that their supplemental briefs must be received by the clerk of this court by the aforementioned due dates or they will not be filed in. The parties are advised that further motions for extensions of time will not be entertained.

Note: The parties are advised that rule 26(c), Federal Rules of Appellate Procedure, which allows for three additional days after service by mail, shall not apply when the due dates of briefs are specifically set by order of this court. All briefs are due by the dates ordered.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
January 6, 1999

By the Court:

ROBIN ZHARAN and KAREN ZAHRAN, Plaintiffs-Appellants,	)	
No. 97-1712 v.	)	Appeal from the United States District Court for the Eastern District of Wisconsin
FRANKENMUTH MUTUAL INSURANCE COMPANY, Defendant-Appellee.	)	No. 90 C 337
	)	Thomas J. Curran, Judge
ROBIN ZAHRAN and KAREN ZAHRAN Plaintiffs-Appellants,	)	Appeal from the United States District Court for The Eastern District of Wisconsin.
97-3710 & 98-2123 v.	)	
GERALD G. SCHMIDT, JR., individually and the law firm of SCHMIDT, DARLING & ERWIN, MARJAN R. KMIEC, individually, and the law firm of KMIEC LAW OFFICE, ROBERT C. BURRELL, individually and the law firm of BORGELT, POWELL, PETERSON & FRAUN, et al., Defendants-Appellees	)	No. 95 C 334
	)	Charles N. Clevert, Judge

ROBIN ZAHRAN and KAREN ZAHRAN, Plaintiffs-Appellants,	)Appeal from the United)States District Court for)the Eastern District of
No. 97-3813 & 98-2122 v.	)Wisconsin.)
CLEARY BUILDING CORPORATION, Wisconsin Corporation, and RALPH UECKER AND SONS, INCORPORATED,	) No. 93 C 543
Defendants-Appellees	)Charles N. Clevert,) Judge

The following is before the court:

1. **EMERGENCY MOTION FOR EXTENSION OF TIME BY 11 DAYS OR UNTIL JANUARY 22, 1999, IN APPEAL NO. 97-3710 & 98-2123,** filed on December 30, 1998, by counsel for appellants.

2. **EMERGENCY MOTION TO FILE AN EVERSIZED SUPPLEMENTAL BRIEF TO THE EXTENT OF 12,000 WORDS IN APPEAL NOS. 97-3710 & 98-2123 AND 97-3813 & 98-2122,** filed on December 30, 1998, by counsel for the appellants.

3. **PLAINTIFFS-APPELLANTS' MOTION TO FILE INSTANTER APPELLANTS SUPPLEMENTAL BRIEF,** filed on January 7, 1999, by counsel for appellants.

IT IS ORDERED that #1, #2, and #3 are **DENIED.**

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
January 14, 1999

By the Court:

ROBIN ZHARAN and KAREN ZAHRAN, Plaintiffs-Appellants, No. 97-1712 v. FRANKENMUTH MUTUAL INSURANCE COMPANY, Defendant-Appellee.	)Appeal from the United States District Court for the Eastern District of Wisconsin No. 90 C 337 Thomas J. Curran, Judge
ROBIN ZAHRAN and KAREN ZAHRAN Plaintiffs-Appellants, 97-3710 & 98-2123 v. GERALD G. SCHMIDT, JR. individually, and the law firm of SCHMIDT, DARLING & ERWIN, MARJAN R. KMIEC, individually, and the law firm of KMIEC LAW OFFICE, ROBERT C. BURRELL, individually and the law firm of BORGELT, POWELL, PETERSON & FRAUN, et al., Defendants-Appellees	)Appeal from the United States District Court for The Eastern District of Wisconsin. No. 95 C 334 Charles N. Clevert, Judge

ROBIN ZAHRAN and KAREN ZAHRAN, Plaintiffs-Appellants,	)Appeal from the United)States District Court for)the Eastern District of
No. 97-3813 & 98-2122 v.	)Wisconsin.
CLEARY BUILDING CORPORATION, Wisconsin Corporation, and RALPH UECKER AND SONS, INCORPORATED, Defendants-Appellees	) No. 93 C 543)Charles N. Clevert,) Judge

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Upon consideration of the **EMERGENCY MOTION TO RECONSIDER THIS HONORABLE COURT'S DENIAL OF APPELLANTS' MOTION TO FILE THEIR BRIEF IN APPEAL NO. 97-1712 INSTANTER AND TO RECONSIDER THE TO RECONSIDER THE COURT ORDER, IS DENIED**

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
March 4, 1999

By the Court:

ROBIN ZHARAN and KAREN ZAHRAN, Plaintiffs-Appellants,	)	
No. 97-1712 v.	)	Appeal from the United States District Court for the Eastern District of Wisconsin
FRANKENMUTH MUTUAL INSURANCE COMPANY, Defendant-Appellee.	)	No. 90 C 337
	)	Thomas J. Curran, Judge

ROBIN ZAHRAN and KAREN ZAHRAN Plaintiffs-Appellants,	)	
97-3710 & 98-2123 v.	)	Appeal from the United States District Court for The Eastern District of Wisconsin.
GERALD G. SCHMIDT, JR., individually and the law firm of SCHMIDT, DARLING & ERWIN, MARJAN R. KMIEC, individually, and the law firm of KMIEC LAW OFFICE, ROBERT C. BURRELL, individually and the law firm of BORGELT, POWELL, PETERSON & FRAUN, et al., Defendants-Appellees	)	No. 95 C 334
	)	Judge C. Clevert

ROBIN ZAHRAN and KAREN ZAHRAN, Plaintiffs-Appellants,	))Appeal from the United)States District Court for)the Eastern District of
No. 97-3813 & 98-2122 v.	)Wisconsin.
CLEARY BUILDING CORPORATION, Wisconsin Corporation, and RALPH UECKER AND SONS, INCORPORATED, Defendants-Appellees	))) No. 93 C 543)))Charles N. Clevert,) Judge

Upon consideration of the **PLAINTIFFS-APPELLANTS' MOTION TO MOVE THE COURT AND HONORABLE JUDGES BAUER, FLAUM, AND KANNE TO TRANSFER THE FOLLOWING APPELLANTS' APPEALS DISPOSITION TO ANOTHER CIRCUIT FOR RULING OR IN THE ALTERNATIVE FOR THE ABOVE NAMED NOS.** 97-1712, 97-3710, 98-2123, 97-3813 & 98-2122

JUDGES TO ABSTAIN FROM PARTICIPATING IN THE DETERMINATION OF THESE APPEALS DUE TO PRIOR DISCLOSURE, filed on March 1, 1999, by the prose appellants,

IT IS ORDERED that #1 is **DENIED.**

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Judgement- without oral argument

Date : March 25, 1999

Before
Hon. **William J. Bauer**, Circuit Judge
Hon. **Joel M. Flaum**, Circuit Judge
Hon. **Michael S. Kanne**, Circuit Judge

No. 97-1712

ROBIN ZHARAN and KAREN ZAHRAN, Plaintiffs-Appellants, No. 97-1712	))Appeal from the United)States District Court for)the Eastern District of)Wisconsin	
FRANKENMUTH MUTUAL INSURANCE COMPANY, Defendant-Appellee.	))))	No. 90 C 337

Appeal from the United States District Court for the Eastern District of Wisconsin
No. 90 C 337, Thomas J. Curran, Judge

The judgment of the District Court is AFFIRMED, with costs, in accordance with the decision of this court entered on this date.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 4, 1999*
Decided March 25, 1999
Unpublished order, Not to be Cited Per Circuit Rule 53

Before
Hon. **William J. Bauer**, Circuit Judge
Hon. **Joel M. Flaum**, Circuit Judge
Hon. **Michael S. Kanne**, Circuit Judge

ROBIN ZHARAN and KAREN ZAHRAN, Plaintiffs-Appellants,	)Appeal from the United)States District Court for
No. 97-1712 v.	)the Eastern District of)Wisconsin
FRANKENMUTH MUTUAL INSURANCE COMPANY, Defendant-Appellee.	) No. 90 C 337

ORDER

The events giving rise to this appeal, like those underlying a long series of other appeals involving these litigants, stem from damage to Wisconsin farm property owned by Robin and Karen Zahran. Because a history of this litigation was set out in an order entered on September 17, 1998, *see Zahran v. Frankenmuth Mut. Ins. Co.*, Nos. 97-1712 & 98-1905, 1998 WL 975072 (7th Cir. Sept. 17, 1998) ("*Zahran IV &V*") (unpublished disposition), only those facts necessary to address the instant appeal will be repeated. For the reasons set forth below, the decision of the district court to enter a writ of

execution in favor of Frankenmuth Mutual Insurance Company is affirmed.

I. Background

The Zahrans are Illinois citizens who filed a diversity action in federal court against their

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* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary and the appeal is submitted on the briefs and record. *See*Fed. R. App. P. 34(a)(2).

insurer, Frankenmuth Mutual Insurance Co. ("Frankenmuth"), when Frankenmuth failed to pay for damage sustained at the Zahrans' Wisconsin farm. Frankenmuth subsequently counter sued to recover $182,888 it had already paid out on the claim, alleging that the policy was void because of the Zahrans' fraud, concealment, and material misrepresentation. Following a jury trial in the Eastern District of Wisconsin, where the farm is licated, both parties appealed and on March 28, 1994, this court affirmed the jury's verdict for Frankenmuth, reversed the district court's dismissal of the issuer's counterclaim, and remanded the case with instructions for the district court to enter judgment in favor of Frankenmuth on the counterclaim. *See Zahran v. Frankenmuth Mut. Ins. Co.*, Nos. 92-1778 & 92-1847, 1994 WL 107909 (7th Cor. Mar. 28, 1994) (*"Zahran I"*) (unpublished disposition).

Following this court's decision in *Zahran I,* Frankenmuth registered the district court's judgment in the Northern District of Illinois, where the Zahrans reside. *See* 28 U.S.C. }1963. Frankenmuth was able to garnish only $3,408.83 from a bank account in partial satisfaction of the judgment, though at the time the total for the judgment, plus interest and costs, exceeded $200,000. Frankenmuth then filed a rule 69(a) which the district judge granted on February 14, 1997. The Manitowoc County Sheriff's Office received the writ

in April, 1997, and Frankenmuth entered a lien against the Zahrans' farm in preparation for a forced sale of the property in satisfaction of the judgment. *See* Wis. Stat. }} 815.05, 815.195. Because the Zahrans settled with Frankenmuth prior to the sale, it appeared that the instant appeal, No. 97-1712 (*"Zahran IV"*), was thereby mooted. We called for statements explaining why the appeal should not be dismissed, but upon review, determined that the controversy indeed remains live and is ripe for disposition.

On appeal, the Zahrans contend that Frankenmuth's registration of the judgment in Illinois divested the Wisconsin court of jurisdiction to entertain Frankenmuth subsequent motion for a writ of execution. They argue in the alternative that the Wisconsin District court's denial of a prior motion for a writ of execution operated as a dismissal with prejudice of the entire judgment entered on June 29, 1994, through they do not challenge this court's decision in *Zahran I,* which directed the district court to enter the judgment that gave rise to the writ of execution.

II. Discussion

As we noted in *Zahran V,* federal appellate courts have jurisdiction over final orders of the district courts. *See* 28 U.S.C.} 1291; *Zahran V,* 1998 WL 975072, at *4. An order is generally considered final for purposes of section 1291 if it "ends the litigation on the merits and leaves nothing for the district court to do but execute the judgment." *Baltimore Orioles, Inc. v. Major League Baseball Players Ass'n,* 805 F. 2d 663, 666 (7th Cir. 1986). Post-judgment proceedings, however, are treated for appellate purposes as separate lawsuits; in this regard, a post-judgment order need not dispose of all of the issues raised in the suit to be appealable. Rather, it need only dispose of all of the issues raised in the order. *See Central States, S.D. & S.W. Areas Pension Fund v. Express*

Freight Lines, Inc., 971 F. 2d 5,6 (7th Cir. 1992); *Transportation Cybernetics, Inc. v. Forest Transit Comm'n*, 950 F. 2d 350, 352 (7th Cir. 1991). Here, the district court entered an order granting Frankenmuth's motion for a writ of execution, despite the Zahrans' ;objections to the motion. Pursuant to the Federal Rules of Civil Procedure, the writ of execution issued ten days later. *See* Fed. R. Civ. P 62(a)/ The district court's decision is thus a final, appealable, post[judgement order.

The Zahrans suggest that the Wisconsin district court was deprived of jurisdiction to enter a writ of execution because of Frankenmuth's registration of the judgment in Illinois. The argument is meritless. Section 1963 provides in relevant part:

A judgment in an action for the recovery of money or property entered in any district court...may be registered... in any other district... A judgment is registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.

28 U.S.C. } 1963. The statute does not provide for exclusive jurisdiction and nothing in the language of the statue or its commentary would support such a suggestion. Indeed, the registration statute was intended as an alternative to the litigation of separate actions in every jurisdiction in which a judgment debtor owed property. It was enacted to streamline the enforcement of federal judgments, to prevent a judgment debtor from frustrating enforcement of a judgement, to assure that jurisdictional impediments such as diversity of citizenship would not impede enforcement, and to protect both judgment creditors and judgment debtors from the burden of further litigation in attempting to satisfy a judgment. Once registered- and a judgment may be registered in more than one district- a foreign judgment may be enforced by the judgement creditor in any manner permissible under the Federal Rules of Civil

Procedure and the laws of the state or states in which the judgment is registered. The remedy provided by section 1963 is thus cumulative, and registration in a foreign court "in no way extinguishes the power and authority of the original judgment court to enforce its own judgment." *Travelers Indemity Co. of Ill. v. Hash Management, Inc.* 173 F.R.D. 150, 152 (M.D.N.C.1997); *see also 28 U.S.C. } 1963); Ohio Hoist Mfg. v. LiRocchi,* 490 F. 2d 105, 107 (6th Cir. 1974); *Stanford v. Utley,* 341 F.2d 265, 270 (8th Cir. 1965); *Associated Sus. Tel. Sys. Corp. v. Greater Capital Corp.,* 128 F.R.D. 63, 65 (D.N.J. 1989); 12 Charles A. Wright *et al.,* Federal Practice and Procedure, }} 2787, 3012 (2d ed. 1995 & Supp. 1998).

Zahrans' next argument fared little better than their first. They contend that the district court's denial of a prior motion for a writ of execution not only deprived the court of jurisdiction to grant any subsequently-issued writ, but operated as a dismissal of the judgement in its entirety, thereby thwarting this court's decision in *Zahran I.* Rule 69 of the Federal Rules of Civil Procedure, however, provides that "the proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held." Fed. R. Civ.. P. 69(a). Under Wisconsin law, money judgments may be enforced by execution, and an execution of judgment "may issue at any time within 5 years after the rendition of the judgment." Wis. Stat. }} 815.02, 815.04(1)(a) (West 1998). While no execution on a judgment validly rendered shall issue beyond a statutory twenty-year period of redemption, and while a failure to adhere to the requirements of the statutory scheme will invalidate all proceedings held subsequent to the writ's issuance, *see id. }}* 806.06, 815.04(1)(c), 815.05; *Wilson v. Craite,* 210 N.W. 2d 700, 703-05 (Wis. 1973); *Hanks v. Scherer,* 47 N.W. 2d 905, 907-08 (Wis. 1951), nothing in the statutes suggests that a judgment creditor denied a writ of

execution is precluded from simply refiling in order to seek satisfaction of a judgment.

That is what took place here. On May 20, 1996, the district court denied Frankenmuth's Rule 69 motion because the isurer had failed to provide affidavits that "it had complied with all applicable provisions of Wisconsin law." Following the garnishment action filed in the Northern District of Illinois, docketed as case No. 95 C 0957, *see* 28 U.S.C. } 1963, Frankenmuth filed a second motion for a writ of execution in the Eastern District of Wisconsin. On February 14, 1997, Frankenmuth's second motion was granted. There is no basis on which to conclude that the Wisconsin court that entered the original judgment was without jurisdiction to enter its subsequent order or that the writ of execution was improperly granted. These augments were properly rejected by the district court.

Accordingly, **IT IS ORDERED** that the February 14, 1997, decision of the district judge entering a writ of execution in favor of Frankenmuth is **AFFIRMED.**

Based on the foregoing discussion and this court's order of September 17, 1989, *see Zahran V,* 1998 WL 975072, at *7, **IT IS FURTHER ORDERED** that Robin and Karen Zahran must obtain leave of this court before filing in any federal court in this circuit another suit arising out of or related to the 1989 and 1990 damage to their Wisconsin farm. Pursuant thereto, the Zahrans must submit to the clerk of this court a motion for leave to file any such suit, which shall be accompanied by copies of the proposed complaint, this order, and the decision entered in *Zahran V.* the motion must either (a) be prepared and filed by a licensed attorney, or (b) if filed by the plaintiff(s) *pro se*, be accompanied by a memorandum of law in support of the claims, which shall include an affidavit certifying that the claims are not frivolous and have never before been raised in a prior suit.

IT IS FURTHER ORDERED that all other requested relief and all other pending motions in the instant appeal, *Zahran IV*, No. 97-1712, are **DENIED.**

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

April 23, 1999

Before
Hon. **William J. Bauer**, Circuit Judge
Hon. **Joel M. Flaum**, Circuit Judge
Hon. **Michael S. Kanne**, Circuit Judge

ROBIN ZHARAN and KAREN ZAHRAN, Plaintiffs-Appellants, No. 97-1712	))Appeal from the United)States District Court)for the Eastern District)of Wisconsin	
FRANKENMUTH MUTUAL INSURANCE COMPANY, Defendant-Appellee.	))))	No. 90 C 337

ORDER

Upon consideration of the petition for rehearing and suggestion for rehearing *en banc* filed in the above-entitled cause on April 8, 1999, by petitioners-appellants *pro se*, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing and suggestion for rehearing *en banc* be **DENIED.**

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Date : April 29, 1999
No. 98-1905

ROBIN ZAHRAN and KAREN ZAHRAN,
Plaintiffs-Appellants

v.

FRANKENMUTH MUTUAL INSURANCE CO. THOMAS H. KOCOUREK, Sheriff of Manitowoc County, Wisconsin and his agents and representatives and the Corp. of Manitowoc County, Wis., ROBERT ZEITNER, et al.,
Defendants-Appelles

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division No. 97 C 978, Harry D. Leinenweber, Judge

The following are before the court:

1. **MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR ROBIN ZAHRAN AND KAREN ZAHRAN,**filed on December 18, 1998, by Attorney Andrew M. Cohen.

2. **MOTION FOR RULE TO SHOW CAUSE AND FURTHER RELIEF,** filed on April 22, 1999, by Defendant Frankenmuth Mutual Insurance Company.

IT IS ORDERED that #1 is **GRANTED.** The clerk is directed to correct the docket to reflect Attorney Andrew M. Cohen's withdrawal from this matter. On April 22, 1999, Appellee Frankenmuth Mutual Insurance Company filed a motion to show cause. Because Attorney Andrew M. Cohen has withdrawn from his representation of Appellants Robin and Karen Zahran, he need not respond on behalf of appellants to this court's order of April 23, 1999. Accordingly,

IT IS FURTHER ORDERED that Robin and Karen Zahran shall **RESPOND** by May 5, 1999, to #2. No extensions of time will be entertained.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Date : May 14, 1999

ROBIN ZAHRAN and KAREN ZAHRAN,
Plaintiffs-Appellants

Nos. 97-1712, 97-3710, v.
18-2122, 98-2123, and 99-1618

FRANKENMUTH MUTUAL INSURANCE CO., GERALD G. SCHMIDT, individually and the law firm of SCHMIDT, DARLING & ERWIN, MARJAN R. KMIEC, individually, and the law firm of KMIEC LAW OFFICE, ROBERT C. BURRELL, individually and the law firm of BORGELT, POWELL, PETERSON & FRAUN, CLEARY BUILDING CORP. and RALPH UECKER & SONS INC., and COREGIS INS. CO. Defendants-Appelles

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division No. 97 C 978, Harry D. Leinenweber, Judge

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Upon consideration of the **MOTION FOR DISQULIFICATION OF THE HONORABLE JUDGES, BAUER, FLAUM, AND KANNE FROM PARTICIPATING IN VOTING ON APPELLANTS' BRIEFS FOR REHEARING IN BANK** [sic], filed on April 22, 1999, by the pro se appellants,

IT IS ORDERED that the motion is **DENIED.** See In re Mason, 916 F. 2d 384, 385-86 (7th Cir 1990).

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ROBIN ZAHRAN and
KAREN ZAHRAN,
Plaintiffs, Case No. 90-C-337

v.

FRANKENMUTH MUTUAL
INSURANCE CO.
Defendant.

Dated March 29, 1996

ORDER

The Defendant in the above-captioned case is seeking a writ of execution subjecting the Plaintiffs' real property to satisfying a judgment of $182,888.37 which was entered by this court on June 29, 1994. The Defendant is required to submit affidavits or other evidence establishing that it has complied with the applicable requirements of Wisconsin law. The Defendant must also submit a legal description of the real and/or personal property at issue and a proposed writ naming the authority who will execute writ.

IT IS FURTHER ORDERED that, within seven days of the date of this order, the Defendant shall submit copies of the Exhibits referenced in its motion. No exhibits were received by the Clerk of Court.

Done and Ordered in Chambers at the United states Courthouse, Milwaukee, Wisconsin this 29th day of March, 1996.

Thomas J. Curran
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ROBIN ZAHRAN and
KAREN ZAHRAN,
Plaintiffs, Case No. 90-C-337
v.
FRANKENMUTH MUTUAL
INSURANCE CO.
Defendant.

Dated April 10, 1996

ORDER

Having reviewed the moving papers of the Plaintiffs in the above-captioned case, the court ORDERS that the"Motion to Admit Attorney John H. Bickley Jr. to Practice and Proceed Pro Hac Vice Before This Court on the Above Captioned Case: (filed April 8, 1996) IS DENIED. Attorney Bickley must tender the fee and seek admission to practice pursuant to Local Rule 2.

IT IS FURTHER ORDERED that Plaintiff Robin Zahran's "Motion to Extend Time to Answer or Otherwise Plead to All Pending Matters" (filed April, 1996) IS DENIED. Only a motion for a writ of execution is pending before this court and neither the Federal Rules nor this court contemplate the filing of an "answer" or any other "pleading" by the Plaintiffs.

Done and Ordered in Chambers at the United States Courthouse, Milwaukee, Wisconsin this 18th day of April, 1996.

Thomas J. Curran

United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ROBIN ZAHRAN and
KAREN ZAHRAN,
Plaintiffs, Case No. 90-C-337

v.

FRANKENMUTH MUTUAL
INSURANCE CO.
Defendant.

Dated May 20, 1996

ORDER

Because Frankenmuth Mutual Insurance Company has not complied with the court's Order of March 29, 1996, by filing an affidavit establishing that it has complied with all applicable provisions of Wisconsin law, the court ORDERS that Frankenmuth's "Motion of Issuance of Writ of Execution" (filed March 25, 1996) IS DENIED.

IT IS FURTHER ORDERED that this action is dismissed.

Done and Ordered in Chambers at the United states Courthouse, Milwaukee, Wisconsin this 20th day of May, 1996.

Thomas J. Curran
United States District Judge

STATE OF WISCONSIN CIRCUIT COURT
Manitowoc COUNTY
Robin Zahran et ux vs. Frankenmuth Mutual Insurance Co.

EXECUTION AGAINST PROPERTY

Sheriff of Manitowoc County:

Judgment was entered in this case as indicated below for the amount listed, plus subsequent costs, including statutory interest from entry of judgment.

You are ordered to satisfy this judgment out of the personal property of the judgment debtor within your county. If sufficient personal property cannot be found, satisfy the judgment out of the real property in your county belonging to the judgment debtor.

Return this execution within 60 days after you receive it, to the Clerk of Circuit court of the issuing county.

Judgment Debtor(s):
Robin Zahran
718 Acorn Hill Lane
OakBrook IL 60521

Karen Zahran
718 Acorn Hill Lane
OakBrook IL 60521

Debtor's Attorney:

Judgment Creditor(s):
Frankenmuth Mutual Insurance Company

Creditor's Attorney:
Steven L. Popuch
200 West Adams St.
Suite 2004
Chicago, IL 60606

Date of Judgment: 04-25-1996
Date Docketed: 04-25-1996
Time Docketed: 03:27pm

Total Judgment & Costs: 182888.37
Satisfactions/Releases/Modifications: 0.00
Net Due: $182888.37

Property/Remarks AMENDED JUDGMENT

Foreign Judgment from United States District Court, Eastern District of Wisconsin; Debtor's address:

718 Acorn Hill Lane, OakBrook, Illinois 60521; Creditor's address not listed on judgment. Judgment with interest thereon from date of entry of judgment at rate provided by law plus costs of the action. Judgment with interest thereon from date of entry of judgment at rate provided by law plus costs of the action. Judgment with interest thereon from date of entry of judgement at rate provided by law plus costs of the action. Judgment with interest thereon from date of entry of judgment at rate provided by law plus costs of the action. Notice of filing judgment mailed 4-25-96.

If execution is in a country other than the originating country, this information must be completed.

Stamped: MTWC. CO. SHERIFF'S DEPT.
'96 OCT 29 AM 9:42
1025 SO. 9TH STREET
MANITOWOC, WI 54220
Sheriff's Endorsement of Receipt
Date Received: 10/29/96

Clerk of Circuit Court:

Joyce C. Vnuk, Deputy 10-14-96
Authorized Signature
1010 South 8th Street
P.O. Box 2000
Manitowoc, WI 54221-2000

Signed by Steven L. Popuch, 10/24/96
"Atty for Frankenmuth Ins."

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ROBIN ZAHRAN and
KAREN ZAHRAN,
Plaintiffs,

Case No. 90-C-337

v.

FRANKENMUTH MUTUAL
INSURANCE CO.
Defendant.

Dated Feb. 14, 1997

ORDER

Having reviewed the moving papers of the Defendant in the above-captioned case, and in the absence of any relevant objections by the Plaintiffs, the court ORDERS that the "Defendant's Motion for Issuance of Writ of Execution" (filed December 6, 1996) IS GRANTED.

IT IS FURTHER ORDERED that the Plaintiffs' "Motion for Plaintiffs' amended Answer to Defendant's Motion for a Writ of Execution Filed by Frankenmuth" (filed January 31, 1997) IS DENIED. The motion, as filed by the experienced pro se litigants, is procedurally incorrect, as there is no "answer" to amend in this action. Moreover, the content of the submission is not responsive to the material issues of the motion for a writ of execution.

IT IS FURTHER ORDERED that the "Plaintiffs' Motion to Dismiss Defendant Frankenmuth's Motion for Issuance of Writ of Execution" (filed January 13, 1997) IS DENIED.

Done and Ordered in Chambers at the United States Courthouse, Milwaukee, Wisconsin, this 14th day of February, 1997.

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Thomas J. Curran
United States District Judge

STATE OF WISONCSIN
CIRCUIT COURT OF MANITOWOC COUNTY

ROBIN ZAHRAN and KAREN ZAHRAN,
Plaintiffs,

v.

no. 96 CV 113

FRANKENMUTH MUTUAL INSURANCE COMPANY,
Defendants.

FOR ISSUANCE OF WRIT OF EXECUTION

To the Clerk of the above-named Court:

Pursuant to Title 28, Section 1962 of the United States Code, being a Judgment which was obtained in Civil Case No. 95-C-0957 in the United States District Court for the Eastern District of Wisconsin and which has become final, all of the real property of the Plaintiffs, robin and Karen Zahran in this district and state has been subject to the lien of the Defendants, Frankenmuth Mutual Insurance Company's judgment since the date of compliance with Wisconsin State registration, recordation and enrolment requirement for state-wide attachment of lien of district court judgment.

Pursuant to Wisconsin Statutes 806.24 the Uniform Enforcement of Foreign Judgments Act, the Judgment was filed in the Circuit Court of Manitowoc County as Civil Case No. 96 CV 113, and which has become final. Pursuant to Wisconsin Statutes 815.05 a certified copy of the Transcript of Judgment Docket and the Judgment Roll was filed in the Circuit Court of Manitowoc County under Case No. 96 CV 113.

your are hereby requested to issue a writ of execution in the above-entitled action to subject so much of Robin and Karen Zahran's personal and real property within your district as may be necessary to satisfy the $182,888.37 judgment recovered by the Defendants from the Plaintiffs in this action on June 29, 1994, the interest accrued on the judgment, the court costs, and the execution costs and expenses.

Dated, February 24, 1997
Thomas Curran (signature)

Steven L. Popuch
Swift, Popuch & Sinclair
Attorney for Defendant
200 West Adams Street, Suite 2004
Chicago, Illinois 60606
1-312-251-0600